

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO HOME LOANS; ENACTING THE HOME LOAN PROTECTION ACT;
PROHIBITING CERTAIN PRACTICES BY CREDITORS; PROVIDING CIVIL REMEDIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Home Loan Protection Act".

Section 2. FINDINGS.--The legislature finds that:

A. abusive mortgage lending has become an increasing problem in New Mexico, exacerbating the loss of equity in homes and causing the number of foreclosures to increase in recent years;

B. one of the most common forms of abusive lending is the making of loans that are equity-based, rather than income-based;

C. the financing of points and fees in these loans provides immediate income to the originator and encourages creditors to repeatedly refinance home loans; and

D. while the marketplace appears to operate effectively for conventional mortgages, too many homeowners find themselves victims of overreaching creditors who provide loans with high costs and terms that are unnecessary to secure repayment of the loan.

Section 3. DEFINITIONS.--As used in the Home Loan Protection Act:

A. "affiliate" means a person that controls, is controlled by or is under common control with another person;

B. "bona fide discount points" means loan discount points that are knowingly paid by the borrower for the express purpose of reducing, and which in fact do result in a bona fide reduction of, the annual percentage rate otherwise applicable to the home loan; provided, however that discount points are not "bona fide discount points" if the annual percentage rate otherwise applicable to the home loan exceeds the conventional mortgage rate by more than:

S
J
C
/
S
B

4
4
9
P
a
g
e

1

1 (1) one and one-half percentage points for a home loan S
2 secured by a first lien; or J
3 (2) three percentage points for a home loan secured by a /
4 junior lien; S
5 C. "borrower" means a natural person obligated to repay a home loan, B
6 including a co-borrower, cosigner or guarantor; 4
7 D. "bridge loan" means a loan for the initial construction of a 4
8 borrower's principal dwelling on land owned by the borrower with a maturity of less 9
9 balance is due and payable; P
10 E. "conventional mortgage rate" means the most recently published a
11 annual yield on conventional mortgages published by the board of governors of the g
12 federal reserve system as of the fifteenth day of the month immediately preceding the e
13 month in which the application for the extension of credit is received by the creditor; 2
14 F. "conventional prepayment penalty" means a prepayment penalty or
15 fee that may be collected in a home loan and that is authorized by federal law;
16 provided that a prepayment penalty is not a "conventional prepayment penalty" if the
17 home loan:
18 (1) has an annual percentage rate that exceeds the
19 conventional mortgage rate by more than two percent; or
20 (2) permits prepayment fees or penalties that exceed two
21 percent of the amount prepaid;
22 G. "creditor" means a person who regularly makes a home loan and
23 includes a loan broker;
24 H. "high-cost home loan" means a home loan in which:
25 (1) the contract rate exceeds the rates threshold; or
(2) the total points and fees exceed the total points and fees
threshold;
I. "home loan" means a loan, including an open-end credit plan, other

1 than a reverse mortgage transaction or a bridge loan, where the principal amount
2 does not exceed the conforming loan size limit for a single-family dwelling as
3 established by the federal national mortgage association and where the loan is
4 secured by:

5 (1) a mortgage or deed of trust on real estate in this state
6 upon which there is located or there is to be located a structure:

7 (a) designed principally for occupancy by one to four
8 families; and

9 (b) that is or will be occupied by a borrower as the
10 borrower's principal residence; or

11 (2) a security interest on a manufactured home that is or will be
12 occupied by a borrower as the borrower's principal residence;

13 J. "manufactured home" means a structure, transportable in one or
14 more sections, which in the traveling mode is eight body feet or more in width or forty
15 body feet or more in length or, when erected on site is three hundred twenty or more
16 square feet and which is built on a permanent chassis and designed to be used as a
17 dwelling with a permanent foundation when erected on land secured in conjunction
18 with the real property on which the manufactured home is located and connected to
19 the required utilities and includes the plumbing, heating, air conditioning and electrical
20 systems contained therein. "Manufactured home" includes any structure that meets all
21 the requirements of this subsection except the size requirements and with respect to
22 which the manufacturer voluntarily files a certification required by the secretary of the
23 United States department of housing and urban development and complies with the
24 standards established under the federal National Manufactured Housing Construction
25 and Safety Standards Act of 1974. "Manufactured home" does not include rental
property or second homes or manufactured homes when not secured in conjunction
with the real property on which the manufactured home is located;

K. "points and fees" means:

(1) all amounts payable by a borrower at or before the closing

1 of a home loan, exclusive of any time-price differential due at closing on the loan
2 proceeds, including:

- 3 (a) loan discount points or other discounts;
- 4 (b) loan fees, finder's fees or similar charges; and
- 5 (c) fees for preparation of loan-related documents; but
- 6 (d) does not include fees for the following purposes, if

7 the amounts are bona fide and reasonable and paid to a person other than the
8 creditor or an affiliate of the creditor: 1) service or carrying charges; 2) credit reports;
9 3) title exam, title insurance or similar purposes; 4) escrow charges for future
10 payments of taxes and insurance; 5) fees for notarizing deeds and other documents;
11 6) appraisals, including fees related to any pest infestation or flood hazard inspections
12 conducted prior to closing; 7) inspection performed prior to closing; 8) attorney fees, if
13 the borrower has the right to select the attorney from an approved list or otherwise; 9)
14 fire and hazard insurance and flood insurance premiums if the conditions in 12 C.F.R.
15 s.226.4(d)(2) are met; 10) tax payment services; 11) surveys; 12) flood certification;
16 and 13) pest infestation and flood determination;

- 17 (2) all compensation paid directly or indirectly to a mortgage
18 broker, including a broker that originates a loan in its own name in a table-funded
19 transaction;
- 20 (3) the maximum prepayment fees and penalties that may be
21 charged or collected under the terms of the loan documents;
- 22 (4) all prepayment fees or penalties that are incurred by the
23 borrower if the loan refinances a previous loan made or currently held by the same
24 creditor or an affiliate of the creditor;
- 25 (5) the cost of all premiums financed by the creditor, directly or
indirectly, for any credit life, credit disability, credit unemployment or credit property
insurance, or any other life or health insurance, or any payments financed by the
creditor, directly or indirectly, for any debt cancellation or suspension agreement or
contract, except that insurance premiums calculated and paid on a monthly basis shall

1 not be considered financed by the creditor; and
2 (6) for open-end loans, the points and fees included in
3 Paragraphs (1) through (5) of this subsection that are known at or before closing plus
4 the minimum additional fees the borrower would be required to pay to draw down an
5 amount equal to the total credit line;

6 L. "rate threshold" means:

7 (1) for a first lien mortgage home loan, an interest rate equal to
8 seven percentage points over the weekly average yield on comparable United States
9 treasury securities on the fifteenth day of the month immediately preceding the month
10 in which the loan is made; and

11 (2) for a subordinate mortgage lien, an interest rate equal to
12 nine percentage points over the weekly average yield on comparable United States
13 treasury securities on the fifteenth day of the month immediately preceding the month
14 in which the loan is made;

15 M. "total points and fees" means the result obtained by subtracting the
16 sum of the conventional prepayment penalties and the bona fide discount points paid
17 from the sum of the points and fees, except that if the sum of the conventional
18 prepayment penalties and the bona fide discount points paid exceeds two points, then
19 only the amount that represents two points shall be subtracted; and

20 N. "total points and fees threshold" means:

21 (1) for a home loan in which the total principal loan amount is
22 twenty thousand dollars (\$20,000) or more, an amount equal to five percent of the
23 total principal loan amount; and

24 (2) for a home loan in which the total principal loan amount is
25 less than twenty thousand dollars (\$20,000), an amount equal to the lesser of one
thousand dollars (\$1,000) or eight percent of the total principal loan amount."

SECTION 4. PROHIBITED PRACTICES AND PROVISIONS REGARDING HOME LOANS.--

A. No creditor shall finance, directly or indirectly, credit life, credit

1 disability, credit unemployment or credit property insurance, or any other life or health S
2 insurance, or any payments directly or indirectly for any debt cancellation or J
3 suspension agreement or contract, provided that nothing in this subsection prohibits /
4 the payment or receipt of insurance premiums or debt cancellation or suspension fees S
5 calculated on the unpaid balance of a home loan and paid on a monthly basis or B
6 prohibits bona fide credit property insurance required by the federal housing 4
7 administration or the United States department of agriculture to be paid in a single 4
8 premium to the respective federal agency. As used in this subsection, "credit property 9
9 insurance" means property insurance written in connection with credit transactions P
10 under which the creditor is the primary beneficiary. a
11 e
12 6

10 B. No creditor shall knowingly and intentionally engage in the unfair act
11 or practice of flipping a home loan. As used in this subsection, "flipping a home loan"
12 means the making of a home loan to a borrower that refinances an existing home loan
13 when the new loan does not have reasonable, tangible net benefit to the borrower
14 considering all of the circumstances, including the terms of both the new and
15 refinanced loans, the cost of the new loan and the borrower's circumstances.

15 SECTION 5. LIMITATIONS AND PROHIBITED PRACTICES FOR HIGH-COST
16 HOME LOANS.--

17 A. No creditor making a high-cost home loan shall directly or indirectly
18 finance any points or fees in excess of two percent of the principal loan amount.

19 B. No creditor shall make a high-cost home loan that contains a
20 scheduled payment that is more than twice as large as the average of earlier
21 scheduled payments, provided that this provision does not apply when the payment
22 schedule is adjusted to the seasonal or irregular income of a borrower.

23 C. No creditor shall make a high-cost home loan that includes payment
24 terms under which the outstanding principal balance will increase at any time over the
25 course of the loan because the regular periodic payments do not cover the full amount
of interest due.

D. No creditor shall make a high-cost home loan that contains a

1 provision that increases the interest rate after default, provided that this provision
2 does not apply to interest rate changes in a variable rate loan otherwise consistent
3 with the provisions of the loan documents if the change in the interest rate is not
4 triggered by the event of default or the acceleration of the indebtedness.

5 E. No creditor shall make a high-cost home loan that includes terms
6 under which more than two periodic payments required under the loan are
7 consolidated and paid in advance from the loan proceeds provided to the borrower.

8 F. Without regard to whether a borrower is acting individually or on
9 behalf of others similarly situated, a provision of a high-cost home loan agreement that
10 allows a party to require a borrower to assert any claim or defense in a forum that is
11 less convenient, more costly or more dilatory for the resolution of a dispute than a
12 judicial forum where the borrower may otherwise properly bring a claim or defense or
13 limits in any way any claim or defense the borrower may have is unconscionable and
14 void.

15 G. After April 1, 2004, no creditor shall make a high-cost home loan
16 without first receiving certification from a third-party, nonprofit counselor approved by
17 the United States department of housing and urban development, the New Mexico
18 mortgage finance authority or the director of the financial institutions division of the
19 regulation and licensing department that the borrower has received counseling on the
20 advisability of the loan transaction.

21 H. No creditor shall make a high-cost home loan without due regard to
22 repayment ability. A creditor who follows debt-to-income ratios and the residual
23 income guidelines established by rule of the financial institution division of the
24 regulation and licensing department shall benefit from a rebuttable presumption that
25 the creditor made the loan with due regard to repayment ability.

I. No creditor shall pay a contractor under a home-improvement
contract from the proceeds of a high-cost home loan unless:

(1) the creditor is presented with a signed and dated
completion certificate showing that the home improvements have been completed; and

1 (2) the instrument is payable jointly to the borrower and the
2 contractor, or, at the election of the borrower, through a third-party escrow agent in
3 accordance with terms established in a written agreement signed by the borrower, the
4 creditor and the contractor prior to the disbursement.

S
J
C
/
S
B

5 J. No creditor shall charge a borrower any fees or other charges, other
6 than those that are bona fide, reasonable and actual, to modify, renew, extend or
7 amend a high-cost home loan.

4
4
9
P
a
g
e

8 K. No creditor shall charge a borrower more than seventy-five dollars
(\$75.00) to defer any payment due under the terms of a high-cost home loan.

9 L. No creditor shall recommend or encourage default on an existing
10 loan or other debt prior to and in connection with the closing or planned closing of a
11 high-cost home loan that refinances all or any portion of the existing loan or debt.

8

12 M. No creditor shall make a high-cost home loan that provides for a
late payment fee except as follows:

13 (1) the late payment fee shall not be in excess of five percent
14 of the amount of the payment past due;

15 (2) the late payment fee shall only be assessed for a payment
16 past due for fifteen days or more;

17 (3) the late payment fee shall not be imposed more than once
18 with respect to a single late payment and no late payment fee shall be charged with
19 respect to a subsequent payment that would have been a full payment but for the
previous default or the imposition of the previous late payment fee;

20 (4) no late payment fee shall be charged unless the creditor
21 notifies the borrower within forty-five days following the date the payment was due that
22 a late payment fee has been imposed for a particular late payment. A late payment
23 fee that the creditor has collected shall be reimbursed if the borrower presents proof
24 of having made a timely payment; and

25 (5) a creditor shall treat each payment as posted on the same
business day as it was received by the creditor, service, creditor's agent or at the

1 address provided to the borrower by the creditor, service or the creditor's agent for
2 making payments.

3 N. No creditor shall make a high-cost home loan that contains a
4 provision that permits the creditor, in its sole discretion, to accelerate the
5 indebtedness, provided that this provision does not prohibit acceleration of a loan in
6 good faith due to a borrower's failure to abide by the material terms of the loan.

7 O. No creditor shall make a high-cost home loan that contains a
8 provision that requires a penalty or premium for prepayment of the balance of the
9 indebtedness.

10 P. A creditor shall not make a high-cost home loan unless the creditor
11 has given the following notice, or a substantially similar notice, in writing, to the
12 borrower, acknowledged in writing and signed by the borrower not later than the time
13 the notice is required under the notice provision contained in 12 C.F.R. s.226.31(c):

14 NOTICE TO BORROWER

15 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN
16 AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES
17 AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY
18 BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND
19 FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-
20 VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR
21 LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH
22 CREDITOR OR BROKER YOU SELECT.

23 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A
24 MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY
25 MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS
UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A QUALIFIED
INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL
ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE

1 LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS
2 AVAILABLE BY CONTACTING THE NEW MEXICO REGULATION AND LICENSING
3 DEPARTMENT.

4 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT
5 MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A
6 LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S
7 INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE
8 ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR
9 CREDITOR ABOUT THESE SERVICES.

10 ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR
11 CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR
12 REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

13 SECTION 6. DEFAULT--NOTICE--RIGHT TO CURE.--

14 A. Before an action is filed to foreclose or collect money due pursuant
15 to a home loan or before other action is taken to seize or transfer ownership of
16 property subject to a home loan, the creditor or creditor's assignee of the loan shall
17 deliver to the borrower a notice of the right to cure the default informing the borrower
18 of:

- 19 (1) the nature of the default;
- 20 (2) the borrower's right to cure the default by paying the sum
21 of money required, provided that a creditor or assignee shall accept any partial
22 payment made or tendered in response to the notice. If the amount necessary to cure
23 the default will change within thirty days of the notice, due to the application of a daily
24 interest rate or the addition of late fees, as allowed by the Home Loan Protection Act,
25 the notice shall give sufficient information to enable the borrower to calculate the
amount at any point within the thirty-day period;

- (3) the date by which the borrower may cure the default to
avoid a court action, acceleration and initiation of foreclosure or other action to seize
the property, which date shall not be less than thirty days after the date the notice is

1 delivered, and the name and address and telephone number of a person to whom the
2 payment or tender shall be made;

3 (4) that if the borrower does not cure the default by the date
4 specified, the creditor or assignee may file an action for money due or take steps to
5 terminate the borrower's ownership in the property by requiring payment in full of the
6 home loan and commencing a foreclosure proceeding or other action to seize the
7 property; and

8 (5) the name and address and the telephone number of a
9 person whom the borrower may contact if the borrower disagrees with the assertion
10 that a default has occurred or the correctness of the calculation of the amount
11 required to cure the default.

12 B. If a creditor or assignee asserts that grounds for acceleration exist
13 and requires the payment in full of all sums secured by the home loan, the borrower,
14 or anyone authorized to act on the borrower's behalf, may, at any time prior to the time
15 title is transferred by means of foreclosure, by judicial proceeding and sale or
16 otherwise, cure the default, and reinstate the home loan. Cure of the default shall
17 reinstate the borrower to the same position as if the default had not occurred and shall
18 nullify, as of the date of the cure, an acceleration of any obligation under the home
19 loan arising from the default.

20 C. To cure a default under this section, a borrower shall not be
21 required to pay any charge, fee or penalty attributable to the exercise of the right to
22 cure a default, other than the fees specifically allowed by this subsection. The
23 borrower shall not be liable for any attorney fees relating to the default that are
24 incurred by the creditor or assignee prior to or during the thirty-day period set forth in
25 Subsection A of this section, nor for any such fees in excess of one hundred dollars
(\$100) that are incurred by the creditor or assignee after the expiration of the thirty-
day period but prior to the time the creditor or assignee files a foreclosure or other
judicial action or takes other action to seize or transfer ownership of the real estate.

After the creditor or assignee files a foreclosure or other judicial action or takes other

1 action to seize or transfer ownership of the real estate, the borrower shall only be
2 liable for attorney fees that are reasonable and actually incurred by the creditor or
3 assignee, based on a reasonable hourly rate and a reasonable number of hours.

4 D. If a default is cured prior to the initiation of any action to foreclose
5 or to seize the residence, the creditor or assignee shall not institute a proceeding or
6 other action for that default. If a default is cured after the initiation of any action, the
7 creditor or assignee shall take such steps as are necessary to terminate the action.

8 E. A creditor or a creditor's assignee of a home loan that has the legal
9 right to foreclose shall, in a foreclosure, use the judicial foreclosure procedures
10 provided by law. In such a proceeding, the borrower may assert the nonexistence of a
11 default and any other claim or defense to acceleration and foreclosure, including any
12 based on a violation of the Home Loan Protection Act, though no such claim or
13 defense shall be deemed a compulsory counterclaim.

14 F. The provisions of this section apply only to home loans that were
15 high-cost home loans at the time of origination.

16 Section 7. CLAIMS AGAINST CERTAIN SELLERS.--Notwithstanding any other
17 provision of law, if a home loan is made, arranged or assigned by a person selling a
18 manufactured home to a borrower or selling home improvements on the residence of a
19 borrower, the borrower may assert all affirmative claims and defenses that the
20 borrower may have against the seller or home improvement contractor against a
21 creditor or a holder or service of the home loan, in any capacity; provided, however,
22 that any claim brought by a borrower pursuant to this section shall be limited to
23 amounts required to reduce or extinguish the borrower's liability under the home loan
24 plus the total amount paid by the borrower in connection with the transaction plus
25 amounts required to recover costs, including reasonable attorney fees.

Section 8. SUBTERFUGE PROHIBITED.--No person shall, with the intent to
avoid the application or provisions of the Home Loan Protection Act:

A. divide a loan transaction into separate parts;

B. structure a home loan transaction as an open-end loan when the

1 loan would have been a high-cost home loan if the loan had been structured as a
2 closed-end loan; or

3 C. perform any other subterfuge.

4 Section 9. CIVIL ACTION.--

5 A. A borrower harmed by a violation of the Home Loan Protection Act
6 may bring a civil action to recover:

7 (1) actual damages, including consequential and incidental
8 damages;

9 (2) statutory damages equal to two times the finance charge
10 paid under the loan and forfeiture of the remaining interest under the loan;

11 (3) punitive damages, when the violation was malicious or
12 reckless;

13 (4) costs and reasonable attorney fees; and

14 (5) injunctive, declaratory and such other equitable relief as

15 the court deems appropriate in an action to enforce compliance with the Home Loan
16 Protection Act.

17 B. The civil action and remedies provided in this section are not
18 exclusive and are in addition to any other action or remedies available to a borrower
19 under applicable law.

20 C. A creditor is not liable in an action brought pursuant to this section
21 if:

22 (1) within thirty days of the home loan closing and prior to
23 receiving any notice from the borrower of the violation, the creditor has made
24 appropriate restitution to the borrower, and appropriate adjustments are made to the
25 loan; or

(2) the violation was not intentional and resulted from a bona
fide error in fact notwithstanding the maintenance of procedures reasonably adopted
to avoid such errors and within sixty days of the loan closing and prior to receiving any
notice from the borrower of the violation, the borrower is notified of the violation,

1 appropriate restitution is made to the borrower and appropriate adjustments are made
2 to the loan.

3 Section 10. PREEMPTION.--Counties and municipalities, including home rule
4 counties and municipalities, are prohibited from enacting and enforcing ordinances,
5 resolutions or rules regulating financial or lending activities or imposing reporting
6 requirements or any other obligations upon creditors regarding home loans that are
subject to the Home Loan Protection Act.

7 Section 11. ACTIONS BASED ON HOME LOANS.--

8 A. Notwithstanding any other provision of law, any person who
9 purchases or is otherwise assigned a high-cost home loan shall be subject to all
10 affirmative claims and any defenses with respect to the loan that the borrower could
11 assert against the original creditor of the loan; provided that this subsection shall not
12 apply if the purchaser or assignee demonstrates by a preponderance of the evidence
13 that a reasonable person exercising reasonable due diligence could not determine
14 that the mortgage was a high-cost home loan. A purchaser or assignee has exercised
such due diligence if the purchaser or assignee:

15 (1) has in place at the time of the purchase or assignment of
16 the subject loans, policies that expressly prohibit its purchase or acceptance of an
17 assignment of any high-cost home loans;

18 (2) requires by contract that a seller or assignor of the home
19 loans to the purchaser or assignee represents and warrants to the purchaser or
assignee that either:

20 (a) the seller or assignor will not sell or assign any
21 high-cost home loans to the purchaser or assignee; or

22 (b) that such seller or assignor is the beneficiary of
23 such a representation and warranty from a previous seller or assignor; and

24 (3) exercises reasonable due diligence at the time of purchase
25 or assignment of home loans or within a reasonable period of time thereafter intended
by the purchaser or assignee to prevent the purchaser or assignee from purchasing

1 or taking assignment of any high-cost home loans; or
2 (4) satisfies the requirements in Paragraphs (1) and (2) of this
3 subsection and establishes that a reasonable person exercising ordinary due diligence
4 could not determine, based on the documentation required by the federal Truth in
5 Lending Act and the itemization of the amount financed and other disclosure
6 disbursements, that the loan was a high-cost home loan.

7 B. Notwithstanding any other law to the contrary, a borrower acting
8 only in an individual capacity may assert against the creditor or any subsequent holder
9 or assignee of the home loan:

10 (1) within six years of the closing of a high-cost home loan, a
11 violation of the Home Loan Protection Act in connection with the loan as an original
12 action;

13 (2) at any time during the term of a high-cost home loan, any
14 defense, claim or counterclaim, or action to enjoin foreclosure or to preserve or obtain
15 possession of the dwelling that secures the loan, including but not limited to a violation
16 of the Home Loan Protection Act, after an action to collect on the home loan or
17 foreclose on the collateral securing the home loan has been initiated or the debt
18 arising from the home loan has been accelerated or the home loan has become sixty
19 days in default; or

20 (3) within three years of the closing of a home loan, a violation
21 of Subsection B of Section 4 of the Home Loan Protection Act as a defense, claim or
22 counterclaim or as an action to enjoin foreclosure or to preserve or obtain possession
23 of the dwelling that secures the loan, after an action to collect on the home loan or
24 foreclose on the collateral securing the home loan has been initiated or the debt
25 arising from the home loan has been accelerated or the home loan has become sixty
days in default.

26 C. In an action, claim or counterclaim brought pursuant to Subsection
27 B of this section, the borrower may recover only amounts required to reduce or
28 extinguish the borrower's liability under the home loan plus amounts required to

1 recover costs and reasonable attorney fees.

2 D. Nothing in this section shall limit the substantive rights, remedies or
3 procedural rights available to a borrower against a creditor, assignee or holder that
4 are otherwise provided by law.

5 Section 12. APPLICATION OF UNFAIR PRACTICES ACT.--A violation of the
6 Home Loan Protection Act constitutes an unfair or deceptive trade practice pursuant to
7 the Unfair Practices Act.

8 Section 13. ATTORNEY GENERAL--ENFORCEMENT OF RULES.--The
9 financial institution division of the regulation and licensing department shall enforce
10 the provisions of the Home Loan Protection Act and, after consulting with the attorney
11 general and considering similar rules of the federal housing administration and the
12 federal department of veterans affairs, shall adopt rules required pursuant to
13 Subsection H of Section 5 of the Home Loan Protection Act and such other rules as
14 are necessary to implement that act.

15 Section 14. LIBERAL INTERPRETATION.--The Home Loan Protection Act shall
16 be liberally construed to carry out its purpose.

17 Section 15. Section 58-7-9 NMSA 1978 (being Laws 1959, Chapter 327,
18 Section 10, as amended) is amended to read:

19 "58-7-9. CONSTRUCTION.--

20 A. None of the provisions of the New Mexico Small Loan Act of 1955
21 are amended or repealed by the New Mexico Bank Installment Loan Act of 1959.

22 B. With the exception of precomputed loan transactions, a lender is
23 not bound by the provisions of the New Mexico Bank Installment Loan Act of 1959 in
24 making loans where the loan is made in accordance with the provisions of Sections
25 56-8-9 through 56-8-14 NMSA 1978.

26 C. None of the provisions of the New Mexico Bank Installment Loan Act
27 of 1959 apply to the assignment or purchase of retail installment contracts originated
28 under the provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or originated
29 under the provisions of Sections 56-1-1 through 56-1-15 NMSA 1978.

1 D. In the event of a conflict between a requirement of the New Mexico
2 Bank Installment Loan Act of 1959 and a requirement of the Home Loan Protection
3 Act, the requirement of the Home Loan Protection Act shall control. S
J
C
/
S
B

4 E. As used in the New Mexico Bank Installment Loan Act of 1959:
5 (1) "year" means three hundred sixty-five days; and 4
6 (2) "month" means one-twelfth of a year. 4
9

6 F. The director of the financial institutions division of the regulation P
7 and licensing department shall issue and file as required by law interpretive a
8 regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of e
9 1959. In issuing, amending or repealing interpretive regulations, the director shall 1
10 issue the regulation amendment or repeal of the regulation as a proposed regulation 7
11 amendment or repeal of a regulation and file it for public inspection in the office of the
12 director of the financial institutions division. Distribution thereof shall be made to
13 interested persons, and their comments shall be invited. After the proposed regulation
14 has been on file for not less than two months, the director may issue it as a final
15 regulation by filing as required by law. Any person who is or may be adversely
16 affected by the adoption, amendment or repeal of a regulation under this section may
17 file an appeal of that action in the district court in Santa Fe county within thirty days

18 G. Any person, corporation or association complying with the
19 regulations adopted by the director of the financial institutions division of the
20 regulation and licensing department is deemed to have complied with the provisions of
21 the New Mexico Bank Installment Loan Act of 1959.

22 H. All loans other than precomputed loan transactions made under the
23 New Mexico Bank Installment Loan Act of 1959 shall be clearly identified on the loan
24 documents as being made under that act."

25 Section 16 Section 58-21-6 NMSA 1978 (being Laws 1983, Chapter 86,
Section 6, as amended by Laws 2001, Chapter 251, Section 5 and by Laws 2001,
Chapter 264, Section 5) is amended to read:

1 "58-21-6. PERSONS EXEMPT FROM REGISTRATION.--The following persons S
2 shall be exempt from all provisions of the Mortgage Loan Company and Loan Broker J
3 Act: C
/

4 A. banks, trust companies, savings and loan associations, credit B
5 unions, insurance companies or real estate investment trusts as defined in 26 USCA 4
6 856; 4

7 B. an attorney licensed to practice law in New Mexico who is not P
8 principally engaged in the business of negotiating loans secured by real or personal a
9 attorney; e
10 1

11 C. a New Mexico-licensed real estate broker rendering service in the 8
12 performance of his duties as a real estate broker who obtains financing for a real
13 estate transaction involving an actual bona fide sale of real estate or real estate
14 contract handled by the broker and who receives only the customary real estate
15 broker's commission in connection with the transaction;

16 D. a person doing an act under order of a court;

17 E. a person making or acquiring a mortgage loan with his own funds
18 for his own investment without the intent to resell the mortgage loan;

19 F. the United States of America, state of New Mexico or any of their
20 branches, agencies, departments, boards, instrumentalities or institutions and all
21 political subdivisions of the state and their agencies, instrumentalities and institutions;
22 and

23 G. a company licensed as a small business investment company under
24 the federal Small Business Investment Act of 1958.

25 Section 17. Section 58-21-19 NMSA 1978 (being Laws 1983, Chapter 86,
Section 19, as amended by Laws 2001, Chapter 251, Section 12 and by Laws 2001,
Chapter 264, Section 12) is amended to read:

"58-21-19. COMPLIANCE WITH FEDERAL LAW.--In connection with any loan
originated, brokered, negotiated or made by a registrant pursuant to the Mortgage

1 Loan Company and Loan Broker Act, registrants shall comply with:

2 A. applicable federal consumer lending laws; and

3 B. the provisions of the Home Loan Protection Act."

4 Section 18. SEVERABILITY.--The provisions of the Home Loan Protection Act
5 are severable, and if any part or application of that act is held invalid, the remainder or
6 its application to other situations or persons shall not be affected. If any provision of
7 the Home Loan Protection Act is declared to be inapplicable to any specific category,
8 type or kind of loan or points and fees, the provisions of that act shall continue to
9 apply with respect to all other loans and points and fees.

9 Section 19. APPLICABILITY--EFFECTIVE DATE.--

10 A. Except as provided in Subsection B of this section, the Home Loan
11 Protection Act shall apply to all home loans made or entered into after January 1,
12 2004.

13 B. The effective date of the provisions of Section 10 of this act is July
14 1, 2003 and, on or after that date, no county or municipality shall enact or enforce any
15 ordinance, resolution or rule regarding home loans that are subject to the Home Loan
16 Protection Act or that, except for the delayed applicability date of Subsection A of this
17 section, would otherwise be subject to that act.

17

18

19

20

21

22

23

24

25